

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS
ON REFERRAL BY THE COMMISSIONER OF REVENUE**

In the Matter of:)	
)	
L S and)	OAH No. 11-0363-PFD
the minor children A E)	Agency No. 2010-065-1606
and K S)	
)	
<u>2010 Permanent Fund Dividends</u>)	

DECISION

I. Introduction

L S's application for a 2010 permanent fund dividend (PFD) was denied initially and at the informal appeal level by the Permanent Fund Division (division). Because Ms. S is the sponsor of A E' and K S's applications for the 2010 PFD, and because she was found ineligible, the children's applications were denied for lack of an eligible sponsor. A's application was also denied because Ms. S failed to sign his application and provide the division with a birth certificate or passport. Ms. S did not appear at the hearing and, as required by regulation, the record remained open for ten days to provide her with an opportunity to show reasonable cause for her failure to appear.¹ The record closed without any further participation from Ms. S. PFD Specialist Bethany Chase represented the division. The division's denial is affirmed because Ms. S has failed to meet her burden of proving she was eligible for a 2010 PFD or that the children have an eligible sponsor.

II. Facts

Ms. S and the minor children A and K are first time filers for a PFD. She timely filed their applications for the 2010 PFD. To be eligible for a 2010 PFD the applicant must have been a resident throughout the qualifying year, 2009. To be a resident on January 1, 2009, Ms. S is required take a step beyond physical presence prior to that date to establish Alaska residency.

¹ Ms. S marked the box requesting a hearing by correspondence and a telephonic hearing. A telephonic hearing was noticed and served upon Ms. S at the address contained in the file. The notice was not returned as unclaimed or undeliverable.

"If a person requests a hearing and fails to appear at the hearing, the [administrative law judge] may issue a decision without taking evidence from that person, unless the person, within 10 days after the date scheduled for hearing, shows reasonable cause for failure to appear." 15 AAC 05.030(j).

Ms. S's application was incomplete. She indicated she moved to Alaska in 2008 but provided no evidence in support. The division requested additional information on November 19, 2010. The Request for Information sought a signed application, an original birth certificate or passport, and proof of residency prior to January 1, 2009.² Regarding the children's applications, the division asked for A's birth certificate or passport and requested Ms. S sign his and K's application. K was born in Alaska on July 17, 2009, so no birth certificate or passport was required. On December 9, 2010, the division received Ms. S's signature on K's application but no substitute sponsor was identified. On February 11, 2011 the division denied the three applications for failure to provide the requested information and for failure to provide proof of residency prior to the qualifying year, 2009.³ Additionally, the children's applications were also denied because they did not have an eligible sponsor. Ms. S requested a formal appeal of the denial and supplied a written statement dated August 30, 2011. In her request she does not respond to the division's request for information. Ms. S does claim she was living in Alaska as early as 2007 but provides no corroborating evidence. There is no indication that she had even established paper ties, such as a bank account, driver's license, car registration, or that she had obtained employment or a residence prior to January 2009.

III. Discussion

As the person requesting the hearing it is Ms. S's burden to come forward with persuasive evidence that it is more likely true than not that she is eligible for a 2010 PFD.⁴ There are several eligibility criteria an applicant must meet to receive a PFD.⁵ One requirement is to have been a resident throughout the qualifying year.⁶ The qualifying year for the 2010 PFD is 2009. That means that Ms. S must have taken at least one step beyond physical presence to established residency prior to January 1, 2009. The division represented that it attempted to corroborate Ms. S's claim but was unable to locate evidence of her presence in Alaska prior to 2009. Regardless, it is Ms. S's burden to prove she is eligible and she has failed to do so. Therefore, her appeal of the division's denial should fail and the children's appeal should fail.

² AS 43.23.005(a)(3) (state resident throughout the qualifying year); AS 43.23.015(c) (requirement for signature); 15 AAC 23.103(d) (requirement to provide birth certificate), (f) (requirement for signature).

³ 15 AAC 23.143(c) (one step beyond physical presence to establish residency prior to qualifying year).

⁴ 15 AAC 05.030(h); 2 AAC 64.290(e).

⁵ AS 43.23.005.

⁶ AS 43.23.005(a)(6).

The minor children, A and K, may apply for their 2010 PFD on their own behalf as each child reaches the age of eighteen, so long as each child does so before he reaches the age of 20.⁷ The children will need to establish that they would have been eligible for a 2010 PFD had an eligible sponsor filed a 2010 PFD application on their behalf. Because this opportunity will be lost after the child reaches 20 years of age, Ms. S should remind each child to apply immediately after their eighteenth birthday.

IV. Conclusion

L S has failed to present evidence sufficient to establish by a preponderance of the evidence that she is eligible for a 2010 PFD. Therefore, the decision of the Permanent Fund Dividend Division to deny her application for a 2010 permanent fund dividend is AFFIRMED.

L S is identified as the sponsor for the minor children A E and K S. Because Ms. S is not eligible for a 2010 PFD, and because no substitute sponsor has been identified, the division's decision to deny the applications of A and K for a 2010 PFD is AFFIRMED.

DATED this 29th day of December, 2011.

By: Signed
Rebecca L. Pauli
Administrative Law Judge

Adoption

This Order is issued under the authority of AS 43.05.010 and AS 44.17.010. The undersigned, on behalf of the Commissioner of Revenue and in accordance with AS 44.64.060, adopts this Decision and Order as the final administrative determination in this matter.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 27th day of January, 2012.

By: Signed
Signature
Rebecca L. Pauli
Name
Administrative Law Judge
Title

[This document has been modified to conform to the technical standards for publication.]

⁷ 15 AAC 23.133(b)-(c).